

Remarks :

Applicant appreciatively acknowledges the Examiner's confirmation of receipt of Applicant's claim for priority and certified priority document under 35 U.S.C. § 119(a)-(d).

Reconsideration of the application, as amended herein, is respectfully requested.

Claims 46 - 72 are presently pending in the application. Claims 1 - 21 were previously canceled. Claim 22 - 45 have been canceled herein. New claims 46 - 72 have been added.

Applicant gratefully acknowledges that item 5 of the above-identified Office Action indicated that claim 39 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claim 39 has been canceled from the instant application.

On page 2 of the Office Action, the Abstract was objected to for referencing the "invention". Applicant has amended the Abstract to address the above concern. Applicant is additionally providing a clean copy of the amended Abstract on page 3 of the present Amendment.

Also on page 2 of the Office Action, claims 21 - 45 were rejected as allegedly being indefinite under 35 U.S.C. § 112,

second paragraph. More particularly, it was alleged in the Office Action that in former claim 21, the term "sprinkle material" was unclear. Applicant's former claim 21 has been canceled and new claims 46 - 72 have been added. New claim 47 recites, among other limitations, applying a "sprinkled material" to the intermediate product. However, Applicant respectfully disagrees that the recitation in claim 47 of "a sprinkled material" renders that claim indefinite. More particularly, the specification of the instant application clearly defines a "sprinkled material", thus making the use of that phrase definite in the claims. For example, the Abstract of the Invention stated, in part:

The intermediate product thus obtained can be **sprinkled with a granular topping** in an additional step. [emphasis added by Applicant]

As such, from the Abstract, a person of ordinary skill in this art would understand the sprinkled material to be a granular topping. Additionally, page 18 of the instant application, line 34 - page 19, line 10, states:

In order firstly to control the viscosity of the lye-treatment solution and its penetration and drainage behavior after application to the respective surface (more rapid viscosity rise, restricted absorption of lye solution into open pores) **and secondly to improve the adhesion of sprinkled material, for instance salt or spices** (increased stickiness and film formation) on the lye-treated surface, and if necessary to increase the glossiness and the coloring of the treated surface, although the critical effects certainly start from the lye itself, a modified starch or a modified

cereal flour can also be dissolved in the lye solution which modified starch or modified cereal flour was selected from the group consisting of pregelatinized flours, pregelatinized starches, degraded starches and maltodextrins. [emphasis added by Applicant]

As such, the specification of the instant application further defines a sprinkled material as, for instance, salt or spices. Thus, a person of ordinary skill in this art, reading the instant application, would be taught by the instant application that the "sprinkled material" of claim 47 is a sprinkled granular topping, such as salt or spices. Applicant therefore believes that claim 47 is definite under 35 U.S.C. § 112, second paragraph.

On page 2 of the Office Action, claims 22, 24 and 26 were additionally objected to for allegedly not providing antecedent basis for "the article". The rejection of claims 22, 24 and 26 is believed to be moot, in view of the cancellation of those claims. Applicant has addressed the concerns raised with regard to claims 22, 24 and 26, in the newly provided claims.

Further, Applicant's former claims 30, 37, 44 and 45 were rejected under 35 U.S.C. § 112, second paragraph. The rejection of claims 30, 37, 44 and 45 is believed to be moot, in view of the cancellation of those claims. Applicant has

addressed the concerns raised with regard to claims 30, 37, 44 and 45, in the newly provided claims.

It is accordingly believed that the specification and the claims meet the requirements of 35 U.S.C. § 112, second paragraph.

On page 3 of the Office Action, claims 21, 30 – 32, 35, 38 and 43 – 45 were rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by British Patent Publication No. GB 2 228 856 to Schiffmann et al ("SCHIFFMANN").

On page 4 of the Office Action, claims 22 – 29,, 33 – 34, 36 – 37 and 40 – 42 were rejected under 35 U.S.C. § 103(a) as allegedly being obvious over **SCHIFFMANN**.

Applicant respectfully traverses the above rejections, as applied to the new claims.

More particularly, claim 46 recites, among other limitations:

baking the intermediate product to produce a glossy, browned covering layer on the lye-treated sites and, optionally, to reduce the moisture content in a depth of the intermediate product. [emphasis added by Applicant]

This "baking" step is supported by the specification of the instant application, for example, in paragraph [0049] of the published application, which states, in part:

For the production of the end product, the intermediate product, that is to say the already lye-treated dimensionally stable shaped body which has already passed through a baking operation in its production, is subjected to a further heat treatment which produces a glossy, browned covering layer on the lye-treated sites of the intermediate product. **This heat treatment of the intermediate product can be a further baking operation which produces a glossy, browned covering layer on the lye-treated sites of the intermediate product.** The heat treatment of the intermediate product can also take place in two phases. Here, the intermediate product is treated, in one heat-treatment phase, with hot air on the outside in order to produce a glossy, browned covering layer on its lye-treated sites. In the other heat treatment phase, the intermediate product is heat treated with microwaves or dielectrically, in order to decrease moisture differences between its outer skin and its center. [emphasis added by Applicant]

As such, Applicant's claim 46 specifically recites, among other limitations, **baking the intermediate process to produce the glossy browned covering layer on the lye treated sites.**

Similarly, Applicant's claims 71 and 72 recite, among other limitations:

a baked article formed from a baked pre-product, treated with lye at the given sites, **and further baked;**

• • •

the glossy-brown surface being produced at the given sites by the further baking. [emphasis added by Applicant]

As such, all of Applicant's claims require, among other limitations, **further baking** a pre-baked, lye treated intermediate product to produce a glossy, brown surface at the lye treated sites.

In contrast to Applicant's currently claimed invention, **SCHIFFMANN** discloses creating the final brown surface of the product in the end-user's **microwave**. See, for example, page 1 of **SCHIFFMANN**, first paragraph, which states:

The present invention relates to a packaged brown and serve product which browns on the product surface **when heated by means of microwave energy**. The present invention also relates to a process for producing a brown and serve product, including the use of a unique composition for **the browning of the product when heated with microwave energy prior to serving**. [emphasis added by Applicant]

See also, for example, page 3 of **SCHIFFMANN**, third paragraph and, for example, page 4 of **SCHIFFMANN**, first full paragraph, which states, in part:

The product of the present invention preferably comprises a typical "brown and serve" product which has been fully formed and prebaked to the exact size and shape required, **except for any desired surface colouration or browning**. [emphasis added by Applicant]

See further, page 4 of **SCHIFFMANN**, second full paragraph, which states:

The result is a brown and serve packaged product that can be easily **browned in a microwave oven**. [emphasis added by Applicant]

As such, in **SCHIFFMANN**, a product that is prebaked to the desired size and shape is treated with an aqueous solution of an alkali metal hydroxide (see page 4 of **SCHIFFMANN**) and, subsequently, **browned through microwaving**. Applicant's claimed invention requires, among other limitations, the browning to occur as the result of a further **baking** step.

As such, **SCHIFFMANN** not only fails to teach or suggest Applicant's claimed invention, but, in fact, teaches away from Applicant's claimed invention. Additionally, the teachings of **SCHIFFMANN** cannot be modified by combination with any other reference to render obvious Applicant's currently claimed invention. M.P.E.P. § 2143.01 states, in part, that **the proposed modification of a reference cannot change the principle of operation of that reference**. Thus, modifying **SCHIFFMANN** to replace the browning caused by the microwave oven, with browning by baking, as required by Applicant's claims, would impermissibly change the **principle of operation** of **SCHIFFMANN**. For the foregoing reasons, among others,

Applicant's claims are believed to be patentable over the **SCHIFFMANN** reference.

Additionally, Applicant's new claim 69 recites, among other limitations:

The method according to claim 46, **wherein the producing step, treating step and baking step are carried out in a single production line.** [emphasis added by Applicant]

Claim 69 is supported by the specification of the instant application, for example, in paragraph [0042] of the instant application, which states:

The inventive method can be carried out in a single production line in which, in the first plant section, the preproduct with its dimensionally stable shaped bodies is produced in a first baking process, the preproduct is treated with lye in the second plant section and in a further plant section is covered with sprinkled material and the resultant lye-treated intermediate product is subjected in the last plant section to a further heat treatment in which the surface of the shaped body is browned and the interior of the shaped body is if appropriate dried. [emphasis added by Applicant]

As such, Applicant's invention of claim 69 requires the steps of claim 46 to occur **in a single production line**. In contrast to this, the product of **SCHIFFMANN** is packaged after the baked pre-product is treated with the aqueous solution, **but before the treated product is browned in the microwave oven of SCHIFFMANN**. As such, in **SCHIFFMANN**, browning occurs at a

separate location (i.e., at the consumer's location) from the pre-baking and treating steps. Rather, the entire goal of **SCHIFFMANN** is to have the product browned at the consumer's location in the consumer's microwave oven. Thus, among other limitations, **SCHIFFMANN** specifically teaches away from the limitations of Applicant's claim 69, by being specifically directed towards a product and method wherein the browning step occurs at a different location than, and not on the same production line as, the previous production steps.

M.P.E.P. § 2143.01 states, in part, that **the proposed modification of a reference cannot render the prior art unsatisfactory for its intended purpose.** Thus, modifying **SCHIFFMANN** to replace the browning caused by the consumer's microwave oven with browning of the final product on the same production line as the prebaking and treating, as required by Applicant's claims, would impermissibly change the render **SCHIFFMANN unsatisfactory for its intended purpose.** As such, Applicant's dependent claim 69 is believed to further distinguish the invention of that claim from the teachings of **SCHIFFMANN**.

Further, **SCHIFFMANN** fails to teach or suggest additional limitations of Applicant's claims, including limitations presented in the dependent claims.

It is accordingly believed that none of the references, whether taken alone or in any combination, teach or suggest the features of claims 46, 70 and 71. Claims 46, 70 and 71 are, therefore, believed to be patentable over the art. The dependent claims are believed to be patentable as well because they all are ultimately dependent on claim 46.

Finally, Applicant appreciatively acknowledges the Examiner's statement that former claim 39, the limitations of which are currently present in new claim 65, "would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims." In light of the above, Applicant respectfully believes that rewriting of current claim 65 is unnecessary at this time.

In view of the foregoing, reconsideration and allowance of claims 46 - 71 are solicited.

In the event the Examiner should still find any of the claims to be unpatentable, counsel would appreciate receiving a telephone call so that, if possible, patentable language can be worked out.

Applic. No. 10/529,460
Response Dated November 10, 2008
Responsive to Office Action of May 8, 2008

Additionally, please consider the present as a petition for a three (3) month extension of time, and please provide a three (3) month extension of time, to and including, November 10, 2008, to respond to the present Office Action.

The extension fee for response within a period of three (3) months pursuant to Section 1.136(a) in the amount of \$1,110.00 in accordance with Section 1.17 is enclosed herewith.

Please provide any additional extensions of time that may be necessary and charge any other fees that might be due with respect to Sections 1.16 and 1.17 to the Deposit Account of Lerner Greenberg Stemer LLP, No. 12-1099.

Respectfully submitted,

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For Applicant

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